



Voluntary Cleanup Program Determinations

What You Need to Know

Purpose

The Department issues two types of closure documents (generally known as determinations) under the Voluntary Cleanup Program (VCP), No Further Requirements Determinations (NFRD) and Certificates of Completion (COC). An NFRD with appropriate engineering and institutional controls as determined by the Department is issued automatically by the VCP to a participant for an eligible property if the data provided in the VCP application package demonstrates that there is no unacceptable risk to exposed populations based on current conditions at the property and the requested use of the property indicated on the VCP application form. The COC is issued by the Department at properties where the presence of hazardous substances and/or oil required the implementation of a Response Action Plan (RAP). The NFRD or COC is based on the information provided in the VCP application form, specifically the property name, address, acreage, and participant name and contact person. Most NFRDs and COCs issued by the VCP are also accompanied by an Environmental Covenant (EC). Applicants should ensure that the information on the application is correct and up to date prior to issuance of the NFRD or COC. The NFRD or COC will specify requirements for continued maintenance, inspection, and notification to the Department based on the site-specific conditions. Prior to the issuance of an NFRD or COC for a property with residual contamination beneath a cap or being addressed by another remedy, an Inspection, Maintenance, and Operations Plan must be submitted to Department for approval and will be attached to the NFRD/COC/EC as an exhibit.

For properties where a RAP was required, once the participant has submitted a RAP completion report and requested issuance of the COC, the Department determines whether the requirements of the approved RAP have been completed to its satisfaction. If the Department determines that the RAP has not been implemented to its satisfaction, the Department may exercise its discretion and not issue the COC for the property. This decision may be based on a lack of adequate documentation, completion of activities or remedies that are not in accordance with the approved RAP, or due to a failure to achieve the applicable cleanup criteria. If the Department determines, using its discretion, that it cannot issue a COC, the Department may require additional remedial actions or implementation of other measures to ensure protection of human health and the environment. The Department may also use its discretion to alter proposed land use controls to be more protective of human health and the environment and address discrepancies in the RAP implementation. A requirement for long-term monitoring and maintenance in an approved RAP may not delay the issuance of a COC.



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Once an NFRD or COC is issued for a property, the VCP application is considered archived and is no longer active. Any subsequent application for a property for a new determination (NFRD or COC) will require the submission of a new VCP application, including the \$6,000 fee and all required documents, and posting of a Notice of Application sign.

The Determination Document

The NFRD or COC will describe liability protections and limitations, conditions for reopeners, land use controls, and institutional controls for the property. NFRDs and COCs that include a land use or institutional control will require recordation of an EC as a part of the determination issued by the Department.

Land Use and Institutional Controls

Examples of the most frequently issued land use controls are included below. The Department drafts specific language for each site taking into consideration the site-specific conditions, implementation of the RAP, and future use of the property. These example land use controls below may also be used for ECs issued for non-VCP properties.

- A. **Requirement for an Environmental Covenant:** Participant shall execute and record the Department approved Environmental Covenant within the land records within thirty (30) days of issuance of this No Further Requirements Determination (or Certificate of Completion).
- B. **Groundwater Use:** There shall be no use of the groundwater beneath this Property for any purpose, other than for environmental testing and monitoring. Installation of geothermal wells on the Property may be approved by the Department upon written request.
- C. **Groundwater Use Restricted to Specific Aquifer, Water Appropriation Permit or Well:** There shall be no use of the groundwater beneath this Property for any purpose except the non-potable use of groundwater from permitted well #XX-XX-XXXX withdrawn in accordance with Water Appropriation Permit #XXXXXXXXXX.
- D. **Excavation Encountering Groundwater:** When conducting any excavation activities on the Property extending to the groundwater table, the Property owner shall implement the requirements of a site-specific health and safety plan to ensure that worker protection measures are met. The anticipated depth to groundwater is ____ feet below ground surface based on the _____ (provide report name and date).



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The encountered groundwater shall be sampled, and if necessary, containerized or treated during all dewatering activities at the Property. If pre-dewatering sampling demonstrates that it is necessary, all dewatered groundwater shall be analyzed before disposal and the analytical results shall be the basis for appropriate disposition of the groundwater in accordance with applicable local, State, and federal laws and regulations.

- E. **Health and Safety Plan:** Prior to conducting any excavation activities at the Property (*may include language describing limited depth or area of concern including reference to an Exhibit*), a site-specific Health and Safety Plan for all personnel will be developed, implemented, and maintained on-site. The Health and Safety Plan must include appropriate dust control measures and air monitoring to ensure that all worker protection requirements are met. All personnel will be made aware of the Health and Safety Plan.
- F. **Annual Summary Report:** The Property owner shall cause an environmental consultant to compile and submit to the Department an annual summary report of all required inspections, maintenance, and data collected during the calendar year. The annual report shall include all information required in the land use controls set forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use control paragraphs from EC*) of this Environmental Covenant. The summary annual report shall be submitted to the Department via email to mde.landrestoration@maryland.gov within thirty (30) days of the end of the calendar year.
- G. **Soil Excavation and Disposal:** *Note that an Inspection, Maintenance, and Operations Plan is required for any property with a soil excavation and disposal requirement and must be attached to the NFRD/COC/EC as an Exhibit.*

If construction or excavation is planned that will breach or alter the capped areas (*may include language describing limited depth or area of concern including reference to an Exhibit*), the Property owner shall submit written notification, to mde.landrestoration@maryland.gov, at least thirty (30) calendar days prior to any planned future excavation or intrusive activities on the Property. Such activities include any activity that breaches the onsite cap or building slab (*edit as applicable. may include language describing limited depth or area of concern including reference to an Exhibit*) including, but not limited to, borings for the purposes of geotechnical, soil or groundwater sampling, landscaping activities, and utility installation or maintenance activities. The notification shall include, at a minimum, a figure documenting the area(s) of excavation or alteration and confirm that activities will follow all procedures set forth in the Inspection, Maintenance, and Operations Plan attached as Exhibit X. The Department may issue



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an invoice for personnel time spent reviewing and overseeing requirements related to post-closure activities.

In the event of an unplanned emergency excavation on the Property, the Property owner shall follow all procedures set forth in the Inspection, Maintenance, and Operations Plan provided as Exhibit X and verbally or electronically notify the Department via phone at 410-537-3493 or via email at mde.landrestoration@maryland.gov within twenty-four (24) hours following initiation of the emergency excavation activities. Within ten (10) calendar days following completion of an unplanned emergency excavation, the Property owner shall file a detailed written report with the Department.

All excavated soil at the Property shall be analyzed before disposal and the analytical results shall be the basis for appropriate disposition of the material in accordance with applicable local, State, and federal laws and regulations. No excavated material shall be transferred to a property other than a disposal facility without appropriate sampling of the specific material proposed to be moved and prior approval of the Department. Copies of the analytical results collected from the excavated soil and records of all soil disposal locations shall be maintained by the Property owner and be made available to the Department upon request. *(For properties where the proposed use is for commercial or industrial purposes, and soil exceeds the residential standards, this last paragraph may be used as a standalone restriction without a requirement for notification and/or an Inspection, Maintenance, and Operations Plan)*

- H. **Concrete Slabs:** *Note that an Inspection, Maintenance, and Operations Plan is required for any property with a cap. In addition, further language may include additional paragraphs related to addressing the vapor intrusion pathway (b or c below).*
- a. The Property Owner shall maintain the integrity of concrete slabs of the buildings *(edit as applicable. may include language describing limited buildings or an area of concern including reference to an Exhibit)* on the Property. To evaluate adequacy of the concrete slabs, the Property owner shall cause the Environmental Consultant to inspect the concrete slabs during the second quarter of each calendar year, conduct the specified maintenance activity in accordance with the Inspection, Operations and Maintenance Plan attached as Exhibit X, and submit an annual summary report of all inspection and maintenance activities to the Department via email to mde.landrestoration@maryland.gov. All deficiencies noted during each annual inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be



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completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs. *(If addressing the vapor intrusion pathway and soil gas concentrations on the property remain above the appropriate Tier 1 residential/ non-residential soil gas target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019, the following sentence should be included)* The Department shall be notified via email to mde.landrestoration@maryland.gov within ten (10) business days after discovery of any needed repairs to the concrete slabs.

- b. **Maintenance of Sealant and Caulking Applied to Concrete Slab:** At all times, the Property owner shall maintain the integrity of the sealant and caulking compound applied to the floor and all joints and cracks in all buildings *(edit as applicable. may include language describing limited buildings or an area of concern including reference to an Exhibit)* to prevent the entry of intrusive organic vapors to the indoor air from contaminated soil and/or groundwater beneath the building. The annual inspection of the concrete slab must include evaluation of the sealant and caulking. All deficiencies noted during each annual inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs. *(If addressing the vapor intrusion pathway and soil gas concentrations on the property remain above the appropriate Tier 1 residential/ non-residential soil gas target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019, the following sentence should be included)* The Department shall be notified via email to mde.landrestoration@maryland.gov within ten (10) business days after discovery of any needed repairs to the sealant and caulking.
- c. **Venting System Beneath Concrete Slab:** The Property owner shall maintain the integrity of the venting system under all buildings *(edit as applicable. may include language describing limited buildings or an area of concern including reference to an Exhibit)* on the Property. The annual inspection of the concrete slab must include evaluation of the venting system. All deficiencies noted during each annual inspection



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shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs. *(If addressing the vapor intrusion pathway and soil gas concentrations on the property remain above the appropriate Tier 1 residential/ non-residential soil gas target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019, the following sentence should be included)* The Department shall be notified via email to mde.landrestoration@maryland.gov within ten (10) business days after discovery of any needed repairs to the venting system.

- i. **Asphalt and/or Concrete Cap(s) Maintenance Restriction:** *Note that an Inspection, Maintenance, and Operations Plan is required for any property with a cap. This standard restriction can apply to all finished surfaces that are considered asphalt and/concrete caps and may be modified slightly to specify specific surfaces (parking areas, roads, bike paths and/or sidewalks).*

The Property owner shall maintain the integrity of the asphalt and/or concrete cap(s) *(edit as applicable. may include language describing the area of concern including reference to an Exhibit)* at all times to prevent any exposure to contaminated soil by any person on the Property at any time. To evaluate adequacy of the asphalt and/or concrete cap(s), the Property owner shall cause the Environmental Consultant to inspect the asphalt and/or concrete cap(s) during the second quarter of each calendar year, conduct the specified maintenance activity in accordance with the Inspection, Operations and Maintenance Plan attached as Exhibit X, and submit an annual summary report of all inspection and maintenance activities to the Department via email to mde.landrestoration@maryland.gov. All deficiencies noted during each annual inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs.



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In the event that a third-party utility provider conducts an excavation on the Property, the Property Owner must inspect the impacted area and ensure the cap has been returned to adequate condition. The documentation of the inspection and repairs shall be included in the annual summary report.

- J. **Landscape and/or Soil Cap(s) Maintenance Restriction:** *Note that an Inspection, Maintenance, and Operations Plan is required for any property with a cap.*

The Property owner shall maintain the integrity of the landscape and/or soil cap(s) (*edit as applicable. may include language describing the area of concern including reference to an Exhibit*) at all times to prevent any exposure to contaminated soil by any person on the Property at any time. To evaluate adequacy of the landscape and/or soil cap(s), the Property owner shall cause the Environmental Consultant to inspect the landscape and/or soil cap(s) during the second quarter of each calendar year, conduct the specified maintenance activity in accordance with the Inspection, Operations and Maintenance Plan attached as Exhibit X, and submit an annual summary report of all inspection and maintenance activities to the Department via email to mde.landrestoration@maryland.gov. All deficiencies noted during each annual inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs.

In the event that a third-party utility provider conducts an excavation on the Property, the Property owner must inspect the impacted area and ensure the cap has been returned to adequate condition. The documentation of the inspection and repairs shall be included in the annual summary report.

- K. **Heating, Ventilation, and Air Conditioning (HVAC) System:** The Property owner shall maintain continuous operation of the HVAC system installed at the Property beneath the tenant spaces located at xxxxx, to address the vapor intrusion to indoor air pathway such that indoor air levels at the Property meet Maryland residential/ non-residential ambient air target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019. At a minimum, the Property owner shall conduct (*monthly, quarterly, annual*) inspections (*if annual, specify during the second quarter of the calendar year*) and submit an annual summary report of all inspection and maintenance activities to the Department via email



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to mde.landrestoration@maryland.gov. All deficiencies noted during an inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs. *(If addressing the vapor intrusion pathway and soil gas concentrations on the property remain above the appropriate Tier 1 residential/ non-residential soil gas target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019, the following sentence should be included)* The Department shall be notified via email to mde.landrestoration@maryland.gov within ten (10) business days after discovery of any needed repairs to the HVAC system.

- L. **Sub-Slab Depressurization System (Tenant Space):** The Property owner shall maintain continuous operation of the sub-slab depressurization system(s) installed at the Property beneath the building(s) or tenant space(s) located at [Street Address and/or Tenant Space #], to address the vapor intrusion to indoor air pathway such that indoor air levels at the Property meet Maryland residential/ non-residential ambient air target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019. The Property owner shall cause the Environmental Consultant to conduct *(monthly, quarterly, annual)* inspections *(if annual, specify during the second quarter of the calendar year)* of the sub-slab depressurization system, as set forth in Section XX of the approved RAP, dated XXXX, and attached to this document as Exhibit X and submit an annual summary report of all inspection and maintenance activities to the Department via email to mde.landrestoration@maryland.gov. In the event that any of the sub-slab depressurization systems fails or ceases to operate, the Department will be notified via email to mde.landrestoration@maryland.gov within forty-eight (48) hours of discovery and the contingency measures set forth in Section XX of the approved RAP, dated XXXX and attached to this document as Exhibit X, will be implemented. All other deficiencies noted during the inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs.*(If addressing the vapor intrusion pathway and soil gas concentrations on the property*



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remain above the appropriate Tier 1 residential/ non-residential soil gas target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019, the following sentence should be included) The Department shall be notified via email to mde.landrestoration@maryland.gov within ten (10) business days after discovery of any needed repairs to the sub-slab depressurization system.

- M. **Specific Tenant Space (Operating Drycleaner)**: At least sixty (60) calendar days prior to any occupancy change of the tenant space located at [Street Address] to any non-dry cleaning business or operation, the Property owner shall demonstrate compliance with all occupancy change requirements set forth in Section X of the approved RAP dated XXXX and attached to this document as Exhibit X. The Property owner shall submit written verification to the Department via email to mde.landrestoration@maryland.gov, including all laboratory data sheets from the indoor air monitoring events conducted within the previous sixty (60) calendar days, showing that the sub-slab depressurization system is in working order and that individual concentrations of chlorinated solvents, as well as the sum of the concentrations of chlorinated solvents, in the indoor air meet Maryland residential/ non-residential ambient air target levels identified in Table 1/Table 2 of the Land Restoration Program Technical Guidelines for Vapor Intrusion dated September 2019 for all chlorinated solvents.
- N. **Long-term Monitoring and Post-treatment Sampling of Indoor Air**: During the continued operation of the sub-slab depressurization system, the Property owner shall maintain compliance with the long-term monitoring of indoor air set forth in Section X of the approved RAP, dated XXXX and attached to this document as Exhibit X. [Entity responsible for LTM] or subsequent Property owner shall cause an Environmental Consultant to complete these long-term monitoring activities and submit all necessary data to the Department.

In the event that action levels or other evaluation criteria established in Section XX of the approved RAP, dated XXXX and attached to this document as Exhibit X are triggered, the participant or subsequent Property owner will be responsible for implementing appropriate measures to remedy the situation, including implementation of any contingency plan contained in the approved RAP. The Participant or subsequent Property owner will also be responsible for the completion of these corrective actions. The Department may issue an invoice for personnel time spent reviewing and overseeing requirements of long-term monitoring.

If wells or monitoring points required for long-term and/or post-treatment monitoring are damaged or destroyed, the Department will require the Property owner to replace them in order to complete the monitoring requirements.



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In the event that operation of the sub-slab depressurization system is discontinued, the Property owner shall maintain compliance with the post-treatment indoor air sampling protocol of Section XX of the approved RAP, dated XXXX and attached to this document as Exhibit X.

- O. **Future Construction - Vapor:** *Depending on the site-specific factors including, but not limited to, contaminants of concern and their concentrations, the Department may require vapor sampling, a vapor barrier, or a vapor system in any future buildings constructed on a property. The standard language for each situation is indicated below.*
- a. **Sampling Required:** Prior to the design and construction of any new building on the Property, the Property owner shall cause an Environmental Consultant to collect soil gas samples from the footprint of the proposed building in compliance with a Department-approved work plan. Based on the results of the soil gas samples, the Department will determine whether the design and construction of all new buildings on the Property must include a vapor barrier or other effective measure to protect occupants of the buildings from exposure to vapors from underlying soils or groundwater. If a vapor barrier or other remedial measure is required beneath the building, the Property owner must conduct indoor air monitoring prior to occupancy verifying the effectiveness of the vapor barrier or other effective measure, and submit the monitoring results to the Department via email to mde.landrestoration@maryland.gov within five (5) business days of receipt.
 - b. **Vapor Barrier Required:** The design and construction of all new buildings on the Property shall include a vapor barrier or other effective measure that will protect occupants of the buildings from exposure to vapors from underlying soils or groundwater. Prior to any occupancy of any new building constructed on the Property, the Property owner must cause an Environmental Consultant to conduct indoor air monitoring, verifying the effectiveness of the vapor barrier or other effective measure, and submit the monitoring results to the Department via email to mde.landrestoration@maryland.gov within five (5) business days of receipt.
 - c. **Vapor System Required:** The design and construction of all new buildings on the Property shall include the installation of a sub-slab depressurization system, or other effective measures, that will protect occupants of the buildings from exposure to vapors from underlying soils or groundwater. Prior to any occupancy of any new building constructed on the Property, the Property owner must cause an Environmental Consultant to conduct indoor air monitoring, verifying the effectiveness of the sub-slab



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depressurization system or other effective measures, and submit the monitoring results to the Department via email to mde.landrestoration@maryland.gov within five (5) business days of receipt.

- P. **Future Construction– Fee Simple Residential Dwellings {To be used in the event that the current development/RAP does not include any of the below type of residential development or has an unknown development}**: The Property (*may include language describing an area of concern including reference to an Exhibit*) shall not be used for fee simple residential dwellings, including freestanding homes, duplexes, townhouses, and condominium dwellings on the ground floor. This restriction may be removed if the current or future Property owner, or designated agent causes an Environmental Consultant to submit a written work plan for review and approval by the Department for the collection of confirmatory soil samples and/or additional vapor samples to the Department via email to mde.landrestoration@maryland.gov, at least six (6) months prior to any planned construction of fee simple residential units. The submitted work plan must include the collection of soil and/or vapor samples and all analytical results from the confirmatory samples must demonstrate that any property where a residential unit will be located meets the Department’s established residential cleanup standards.
- Q. **Site Fencing (Tier 3B Properties)**: The Property owner shall maintain the integrity of the perimeter chain link fencing (*edit as applicable to describe site-specific fence*) at all times. The perimeter chain link fence shall be inspected (*quarterly, bi-annually, annually. If annually, add: during the second quarter of each calendar year*) and an annual summary report of all inspection and maintenance activities shall be submitted to the Department via email to mde.landrestoration@maryland.gov. All deficiencies noted during each annual inspection shall be corrected within thirty (30) calendar days thereafter and so documented in the maintenance records. In the event that identified repairs cannot be completed within thirty (30) calendar days, the Department shall be notified via email to mde.landrestoration@maryland.gov regarding the date the issue was identified, current conditions including access to the impacted area, and a proposed schedule for completing repairs.
- R. **Long-term or Post-treatment Monitoring (Groundwater, Soil Gas and/or Indoor Air)**: This COC/EC is conditioned on the completion of long-term monitoring requirements (*Groundwater, Soil Gas and/or Indoor Air*) as set forth in Section XX of the approved RAP, dated XXXX and attached to this document as Exhibit X. The Participant or subsequent Property owner shall cause an Environmental Consultant to complete these long-term monitoring activities and submit all necessary data to the Department.



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In the event that action levels or other evaluation criteria established in Section XX of the approved RAP, dated XXXX and attached to this document as Exhibit X are triggered, the Participant or subsequent Property owner will be responsible for implementing appropriate measures to remedy the situation, including implementation of any contingency plan contained in the approved RAP. The Participant or subsequent Property owner will also be responsible for the completion of these corrective actions. The Department may issue an invoice for personnel time spent reviewing and overseeing requirements of long-term monitoring.

If wells or monitoring points required for long-term and/or post-treatment monitoring are damaged or destroyed, the Department will require the Property owner to replace them in order to complete the monitoring requirements.

S. Residential Condominiums:

- a. **Notifications to Unit Owners:** The Property owner/ responsible Unit Owner shall provide each unit owner a notification summarizing the remedies and land use controls present on the Property.
- b. **Access to Units:** Unit owners (*may specify necessary units*) shall provide access to the Property owner/ responsible Condominium Unit Owner and the Department for all areas necessary to maintain the (insert description of remedies) as required in the land use controls set forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use control paragraphs from EC*) of this Environmental Covenant.
- c. **Financial Assurance:** The Property owner/ responsible Condominium Unit Owner shall maintain a financial assurance mechanism in an amount sufficient to cover a rolling period of thirty (30) years of operation, maintenance, and anticipated repairs of (*list all remedies*) as required in the land use controls set forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use control paragraphs from EC*) of this Environmental Covenant, as calculated by the developer and approved by the Department.
- d. **Limitations on use of the Ground Floor:** No units on the ground floor of the Property shall be used for a residential (Tier 1) use. This restriction may be removed if the current or future Property owner, or designated agent, causes an Environmental Consultant to submit a written work plan for review and approval for the collection of confirmatory soil samples and/or additional vapor samples to the Department via email to mde.landrestoration@maryland.gov, at least six (6) months prior to any planned



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conversion of the areas to residential (Tier 1) use. The submitted work plan must include the collection of soil and/or vapor samples to demonstrate that contaminants do not exceed the Department's established residential cleanup standards such that remedies and land use controls are no longer necessary.

- e. **Future Redevelopment – Fee Simple Residential Dwellings:** The Property shall not be used for fee simple residential dwellings, including freestanding homes, duplexes, townhouses, and condominium dwellings on the ground floor. This restriction may be removed if the current or future Property owner, or designated agent causes an Environmental Consultant to submit a written work plan for review and approval by the Department for the collection of confirmatory soil samples and/or additional vapor samples to the Department via email to mde.landrestoration@maryland.gov, at least six (6) months prior to any planned construction of fee simple residential units. The submitted work plan must include the collection of soil and/or vapor samples and all analytical results from the confirmatory samples must demonstrate that any property where a residential unit will be located on the ground floor meets the Department's established residential cleanup standards.

- T. **Residential Rental Units:** Prior to future construction of structures (*insert applicable type of conversion or construction*) for use as residential rental units, including freestanding homes, townhouses, and multifamily apartments, the Property owner shall obtain written approval from the Department. The Property owner, or designated agent, shall certify that a single entity will be responsible for operation, maintenance, and anticipated repairs of the (*insert description of remedies*) as required in the land use controls set forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use controls from EC*).
 - a. **Notification to Tenants (Remedies are physically accessible to tenants):** The Property owner, or designated agent, shall include a summary of the remedies and land use controls present on the Property in all executed rental leases. (*If the MDE concurs that the remedies are physically inaccessible to tenants, this restriction does not apply*).
 - b. **Access to Units:** Tenants (*may specify necessary units*) shall provide access to the Property owner, or designated agent, and the Department for all areas necessary to maintain the (*insert description of remedies*) as required in the land use controls set



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forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use control paragraphs from EC*) of this Environmental Covenant.

c. **Conversion to Residential Condominium Ownership:**

- i. **Ground Floor:** No rental apartment units on the ground floor of the Property shall be converted to residential condominium ownership. This restriction may be removed if the current or future Property owner, or designated agent, causes an Environmental Consultant to submit a written work plan for review and approval for the collection of confirmatory soil samples and/or additional vapor samples to the Department via email to mde.landrestoration@maryland.gov, at least six (6) months prior to any planned conversion of the areas to residential (Tier 1A) use. The submitted work plan must include the collection of soil and/or vapor samples to demonstrate that contaminants do not exceed the Department's established residential cleanup standards such that remedies and land use controls are no longer necessary.
- ii. **Upper Floors:** Prior to conversion of rental apartment units on upper floors to residential condominium ownership, the Property owner, or designated agent, shall either: (a) Cause an Environmental Consultant to submit a written work plan for review and approval for the collection of confirmatory soil samples and/or additional vapor samples to the Department via email to mde.landrestoration@maryland.gov, at least six (6) months prior to any planned conversion to residential condominium ownership. The soil and/or vapor samples must demonstrate that contaminants do not exceed the Department's established residential cleanup standards such that remedies and land use controls are no longer necessary; or (b) Provide the Department the following: (1) certification that a single entity will be responsible for operation, maintenance, and anticipated repairs of (*list all remedies*) as required in the land use controls set forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use control paragraphs from EC*) of this Environmental Covenant, which shall include the entity name, mailing address, and a contact person; (2) certification that notification and access requirements for tenants will apply to unit owners; and (3) documentation that the entity shall maintain a financial assurance mechanism acceptable to the Department in an amount sufficient to cover a rolling period of thirty (30) years of operation, maintenance, and anticipated repairs of (*list all remedies*) as required in the



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land use controls set forth above (*for NFRD/COC*) and/or in Paragraphs (*insert all relevant land use control paragraphs from EC*) of this Environmental Covenant.

- d. **Future Redevelopment – Fee Simple Residential Dwellings:** The Property shall not be used for fee simple residential dwellings, including freestanding homes, duplexes, townhouses, and condominium dwellings on the ground floor. This restriction may be removed if the current or future Property owner, or designated agent causes an Environmental Consultant to submit a written work plan for review and approval by the Department for the collection of confirmatory soil samples and/or additional vapor samples to the Department via email to mde.landrestoration@maryland.gov, at least six (6) months prior to any planned construction of fee simple residential units. The submitted work plan must include the collection of soil and/or vapor samples and all analytical results from the confirmatory samples must demonstrate that any property where a residential unit will be located meets the Department’s established residential cleanup standards.

Immediate Actions Required by Participant:

Upon receipt of the NFRD or COC, the Participant is required to complete four actions:

1. **Recording in the Land Records:** If the NFRD or COC issued for the eligible property is conditioned on the permissible use of the property, the participant shall record the NFRD or COC in the land records of the local jurisdiction within thirty (30) days after receipt of the NFRD or COC. This requirement applies to each participant that receives a determination. The VCP recommends that participants who do not own or intend to purchase the property ensure that the current property owner is amenable to recording the NFRD or COC on the property prior to applying to the VCP. The NFRD or COC must be recorded as a Declaration that states that these documents are covenants running with the land and that the terms and conditions shall be binding on the property.

Failure by the participant to record the NFRD or COC within thirty (30) days shall render the determination void. If the NFRD or COC becomes void due to failure to record the document, the participant may request that the VCP reissue the determination for recording purposes.

If the recording process for the issued NFRD or COC is not completed within six months, the determination may not be reissued without reapplying to the VCP, which may include



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submission of a current Phase I ESA for the property documenting that no changes have occurred since submission of the RAP completion report.

- 2. One-Call System:** If the NFRD or COC is conditioned on permissible use of the property, the participant shall send a copy of the NFRD or COC to a one-call system, as defined in Section 12-101 of the Public Utilities Article, Annotated Code of Maryland, within thirty (30) days of receipt of the NFRD or COC.
- 3. Certification:** Each NFRD or COC is accompanied by a certification from the Department that the participant has read and understands the NFRD or COC including the land use and institutional controls. This document should be signed and returned to the Department within ten (10) days.
- 4. Recording Environmental Covenant:** If the NFRD or COC is conditioned on land use or institutional controls, the Department will issue an Environmental Covenant for the eligible property. The Department-approved Environmental Covenant shall be recorded as a Declaration in the land records of the local jurisdiction concurrently with the NFRD or COC. The Environmental Covenant must be recorded as a Declaration that states the document is a covenant running with the land and that the terms and conditions shall be binding on the property.

Fees Associated with Issuance of the Determination:

If the NFRD or COC is conditioned on permissible use of the property, the participant shall pay the Department a fee of \$2,000 upon issuance of the determination. If a participant withdraws after issuance of the NFRD or COC but prior to recording the document, an invoice for the above fee will still be issued.

If a participant files a request to alter a record of determination (i.e. change or remove a land use control) in the land records for an eligible property with conditions, the participant shall pay the Department a fee of \$2,000 in accordance with Section 7-506.1 (c) of the Environment Article. This fee also applies if a participant requests a change in the language of land use requirements after issuance of the NFRD or COC.

Long-term Actions required by Property Owner/Responsible Parties:

For properties issued a determination with land use or institutional controls, it is the responsibility of the property owner and holder of the Environmental Covenant to ensure that the land use controls are being met. In certain cases, a homeowner's association (HOA), condominium association, or tenant may



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be responsible for the land use controls or the property owner or other responsible parties may be required to engage the services of an environmental consultant to complete certain tasks. In such cases, the NFRD or COC and EC will clearly state the party with responsibility, and it is the responsibility of the participant to ensure that the third party has been fully notified of the exact requirements that are the responsibility of that party. The VCP recommends that the participant keep copies of the notification and acknowledgement response as a part of their records.

It is the participant's (and any future property owner's) responsibility to notify the Department five (5) days prior to any property transfer and include in that notification a contact person for the new party responsible for the institutional controls. If the participant wishes to transfer the NFRD or COC to a new property owner, a transfer affidavit is available from the Department upon request.

Once a COC or NFRD is issued, the VCP considers the site archived and VCP involvement is complete. Therefore, all post-issuance institutional controls that require review of data or work plans (e.g. long-term monitoring, work plans for future construction or excavation, etc.), will be handled under the Controlled Hazardous Substance (CHS) Enforcement Division and will be subject to cost recovery. The Department reserves the right to determine whether the required oversight is small enough to waive the fees. The Department may also address any re-openers under the CHS Enforcement Division. Reopeners by the Department may be required due to new or exacerbated contamination, undiscovered contamination, imminent and substantial endangerment, or fraud/material misrepresentation.

The Department shall conduct periodic inspections of closed sites to ensure that all COC and NFRD requirements continue to be met. As a part of these inspections, the Department may request the inspection and maintenance records required in the NFRD or COC be provided. If these cannot be provided or the conditions of the NFRD or COC have not been met, the determination may be void or the property owner may be subject to an enforcement action, including an order and penalty.